

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/12/2007 - 03/16/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1618

Tidewater Finance v. Williams
(Bennett)

BANKRUPTCY. Whether the six-year period between Chapter 7 discharge eligibility set forth in 11 U.S.C. Section 727(a)(8) was equitably tolled for any period that the debtor was in a Chapter 13 case.

06-1801

Smith v. Frye
(Faber)

CONSTITUTIONAL LAW. Whether public employee who was fired because her son filed to become a candidate for public office stated a claim under Section 1983 for violation of her First Amendment rights; did the son have standing to sue under Section 1983.

06-1795

McKoy v. International Paper
(Flanagan)

ERISA. Did the plan abuse its discretion in denying plaintiff's claim for disability retirement benefits; did the district court err in awarding plaintiff attorney's fees.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

MONDAY, MARCH 12, 2007

REVD 2/21/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/12/2007 - 03/16/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1894

Covenant Media v. North Charleston
(Duffy)

CONSTITUTIONAL LAW. Does plaintiff have standing to challenge city's sign regulations; were unconstitutional portions of regulations severable; other issues.

06-1529 (L), 06-1570

Simo v. Mitsubishi Motors NA
(Herlong)

PRODUCTS LIABILITY. Admissibility of expert testimony; sufficiency of evidence regarding alternative design and future wages; punitive damages claim; other issues.

06-1320

Kea v. Newport News Shipbld

LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT. Whether letter submitted on behalf of claimant constituted a request for modification of benefits sufficient to toll the statute of limitations.

PANEL II
COURTROOM TWO
Courthouse Room 201 (Green Carpet)
9:30 a.m.

MONDAY, MARCH 12, 2007

REVD 3/9/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/12/2007 - 03/16/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1877

Baltimore County MD v. Cigna Healthcare
(Blake)

CIVIL PROCEDURE. Whether the district court erred in
permitting removal based upon the fraudulent joinder rule;
other issues.

06-1424

NLRB v. Griffin

LABOR. Whether substantial evidence supports Board's
findings; whether Board erred in considering evidence from
state proceedings which is privileged under N.C. law;
whether NLRB had jurisdiction over petitioner.

06-1782

Croft v. Old Republic Ins Co
(Perry)

INSURANCE LAW. Did insurer make a meaningful offer of UIM
coverage under South Carolina law; did the district court's
order violate the Rules of Decision Act; other issues.

06-4776

US v. Andre Mills
(Blake)

SENTENCING GUIDELINES. Whether prior state conviction for
selling fake narcotics constitutes a "controlled substance
offense" under USSG Section 2K2.1(a)(2).

PANEL III
COURTROOM THREE
Courthouse Room 223 (Tan Carpet)
9:30 a.m.

MONDAY, MARCH 12, 2007

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/12/2007 - 03/16/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

05-4255

US v. Janati
(Hilton)

SENTENCING. Whether district court erred in sentencing defendant pursuant to co-defendant's stipulation as to amount of loss.

05-4883

US v. Dwonne A. Washington
(Williams)

CRIMINAL. Whether and how Crawford v. Washington impacts the type of evidence an expert can permissibly rely upon in forming an opinion under Fed. R. Evid. 703.

06-4474

US v. Broderick F. Jones
(Payne)

CRIMINAL LAW & PROCEDURE. Whether officer had reasonable suspicion that criminal activity was afoot, justifying seizure and pat-down search.

06-1704

Costello Construct v. J.D. Long Masonry
(Lee)

CONTRACT LAW. Whether expert witness testimony was admissible; whether liquidated damages were proper; whether subcontractor was properly terminated; other issues.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

TUESDAY, MARCH 13, 2007

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/12/2007 - 03/16/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1411

Board of Education v. S. G.
(Chasanow)

IDEA. Whether ALJ's findings were regularly made; whether individual qualifies as a student with serious emotional disturbance in need of special education services; other issues.

06-4333

US v. James Nelson
(Kelley)

CRIMINAL LAW & PROCEDURE. Whether conviction for using and carrying a firearm during and in relation to a drug trafficking crime is a "felony drug offense" warranting application of the mandatory minimum ten-year sentence.

05-5266

US v. Marcus D. Dukes
(Titus)

CRIMINAL LAW & PROCEDURE. Admissibility of consent decree; harmless error; other issues.

06-1537 (L), 06-1583 06-1673

LB&B Associates Inc v. NLRB

LABOR. Whether discharge violated the National Labor Relations Act; whether failure to reinstate former strikers violated the Act; other issues.

PANEL II
COURTROOM TWO
Courthouse Room 201 (Green Carpet)
9:30 a.m.

TUESDAY, MARCH 13, 2007

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/12/2007 - 03/16/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-2259

Bader v. Kramer
(Hilton)

HAGUE CONVENTION. Did petitioner satisfy the requirement of the Hague Convention regarding exercise of custody rights; other issues.

06-1459

Natl Energy & Gas v. Liberty Electric
(Messitte)

BANKRUPTCY. Whether payment by non-debtor guarantor may be allocated first to principal, then to interest; whether claim against estate of bankrupt oligor properly calculated; other issues.

06-1516 (L), 06-1539

Intracomm Inc v. Bajaj
(Hilton)

FAIR LABOR STANDARDS ACT. Is plaintiff exempt from the FLSA minimum wage requirements; whether forum selection clause deprives the district court of jurisdiction; other issues.

06-1571

Valley Historic Ltd v. Bank of New York
(Lee)

BANKRUPTCY. Whether bankruptcy court has "related to" or "arising in" jurisdiction over the complaint; did the claims constitute core proceedings; did the complaint state a claim for breach of contract.

PANEL III
COURTROOM THREE
Courthouse Room 223 (Tan Carpet)
9:30 a.m.

TUESDAY, MARCH 13, 2007

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/12/2007 - 03/16/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1461

Aleman v. Chugach Support
(Quarles)

CIVIL RIGHTS. Does Alaska Native Claims Settlement Act exemption related to Title VII also apply to Section 1981 suit; was waiver by Hispanic employees of judicial forum for discrimination claims clear and unmistakable.

06-4343

US v. Patrick O'Neil Gill
(Britt)

SENTENCING. Whether defendant's conduct supported district court's upward departure based, in part, upon Section 5K2.8 of the Sentencing Guidelines.

06-1834

Zurich American Ins v. Laura Tessler
(Mullen)

BANKRUPTCY. Whether debtor was required to provide actual notice of bankruptcy filing and claims bar date to plaintiff; other issues.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

TUESDAY, MARCH 13, 2007

REVD 3/12/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/12/2007 - 03/16/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-19

Hill v. Polk
(Howard)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

06-1591

DRC, Incorporated v. Custer Battles, LLC
(Ellis)

CONTRACT. Were value of services sufficiently certain to support quantum merit award; whether relationship of parties permitted tortious interference with contract claim; other issues.

05-2064 (L), 05-2184

Atkinson v. Sellers
(Currie)

CIVIL. Whether the district court properly granted summary judgment and dismissed appellant's Title VII complaint.

06-2207 (L), 06-2208

In re: Premier Auto
(Nickerson)

MARITIME LAW. Whether plaintiff/debtor stated a constitutional claim or a claim under the Shipping Act based upon lease negotiations with state marine terminal operator; sovereign immunity and other issues.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

WEDNESDAY, MARCH 14, 2007

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/12/2007 - 03/16/2007 Session)

NUMBER AND STYLE

06-1726
Knox v. US Dept Labor

06-4111
US v. Timothy Williams
(Payne)

06-1277
Dankam v. Gonzales

NATURE OF CASE

CLEAN AIR ACT. Whether petitioner engaged in activities protected by the Clean Air Act; whether his employer was aware of any such protected activities.

SENTENCING. Whether district court considered improper sources in reaching its conclusion that defendant qualified for sentencing under the Armed Career Criminal Act; other issues.

IMMIGRATION. Whether substantial evidence supports the Immigration Judge's findings; related issues.

PANEL II
COURTROOM TWO
Courthouse Room 201 (Green Carpet)
9:30 a.m.

WEDNESDAY, MARCH 14, 2007

REVD 3/9/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/12/2007 - 03/16/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1183

King v. McMillan
(Wilson)

CIVIL RIGHTS. Whether petition to intervene in Title VII suit should have been granted pursuant to "single-filing rule;" other issues.

06-4210 (L), 06-4285

US v. Marc J. Blatstein
(Williams)

CRIMINAL LAW & PROCEDURE. Whether district court erred in denying motion to suppress; reasonableness of sentence.

06-1305

Pueschel v. Mineta
(Wexler)

CIVIL. Propriety of dismissal of OWCP claims; denial of motion to amend; other claims.

06-1511

Nance v. Kentucky National
(Copenhaver)

INSURANCE. Was evidence sufficient to demonstrate that insurance company acted with actual malice in settling claim; was punitive damages award excessive.

PANEL III
COURTROOM THREE
Courthouse Room 223 (Tan Carpet)
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WEDNESDAY, MARCH 14, 2007

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

06-1470
Niang v. Gonzales

06-1678
BellSouth Telecom v. NC Utilities Comm
(Mullen)

06-4299
US v. Medina-Garcia
(Thornburg)

NATURE OF CASE

IMMIGRATION. Whether substantial evidence supports the finding that applicant failed to qualify for withholding of removal based on probability daughter will be subject to FGM.

TELECOMMUNICATIONS ACT. Do the resale provisions of the Act require incumbent local exchange carrier to provide competing providers wholesale discounts on resold telecommunications services based on the value of market incentives offered to end users.

CRIMINAL LAW & PROCEDURE. Denial of motions for acquittal; jury instruction.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

WEDNESDAY, MARCH 14, 2007

REVD 3/12/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
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NUMBER AND STYLE

NATURE OF CASE

06-1284

William v. Gonzales

IMMIGRATION. Whether the Board has jurisdiction to consider the removed petitioner's motion to reopen.

06-4576

US v. Rodney K. Johnson
(Doumar)

SENTENCING. Whether an enhancement for physical restraint of the victim duplicates the offense enhancement for use of force in an aggravated sexual assault case.

06-1462

IRS v. White
(Boyle)

BANKRUPTCY. Whether partial surrender of secured property to IRS complies with the requirements of Section 1352(a) of the Bankruptcy Code; whether Chapter 13 plan is confirmable.

04-4654

US v. James H. Williams II
(Currie)

CRIMINAL LAW & PROCEDURE. Whether defendant's Fourth and Fifth Amendment rights were violated pursuant to road-side stop, seizure and custodial questioning; other evidentiary and sentencing issues.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

THURSDAY, MARCH 15, 2007

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/12/2007 - 03/16/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

05-5263

US v. Paul Midgett
(Mullen)

CRIMINAL LAW & PROCEDURE. Whether district court erred in requiring appellant to be shackled during trial; other issues.

06-1716

East TN Natural Gas v. 7.74 Acres in Wythe
(Kiser)

CONDEMNATION: Whether admission of expert witness testimony was abuse of discretion; whether jury verdict was against weight of the evidence and excessive.

06-1746

Bryan v. BellSouth Commun Inc
(Bullock)

CIVIL PROCEDURE. Whether the district court has subject matter jurisdiction over defendant's motion for permanent injunction; did the district court violate Anti-Injunction Act; other issues.

05-4575

US v. Luther Alan Ware
(Beaty)

CRIMINAL LAW & PROCEDURE. Whether robbery had sufficient effect on commerce for prosecution under 18 U.S.C. Section 1951; whether cross-examination of defendant on prior convictions was error.

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NUMBER AND STYLE

06-1282 (L), 06-2268
Depaoli v. Vacation Sales
(Jackson)

06-1471
Watson v. Snow
(Bullock)

06-5008
US v. Under Seal
(Britt)

NATURE OF CASE

CIVIL RIGHTS. Whether the statutory damages cap contained in Section 1981a is based upon the size of the employer at the time of the verdict or at the time the discrimination took place; other issues.

TITLE VII. Whether Burlington Northern & Santa Fe Railway v. White requires reversal; whether agency presented evidence of a legitimate non-retaliatory reason for not promoting plaintiff; is a federal employee subject to more onerous standard of proof.

CRIMINAL LAW & PROCEDURE. Whether production of documents protected by the attorney-client privilege should have been compelled; other issues.

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THURSDAY, MARCH 15, 2007

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UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

06-1458
Sayyed v. Wolpoff & Abramson
(Messitte)

FAIR DEBT COLLECTION PRACTICE ACT. Whether court erred by finding law firm immune for debt collection practices.

06-4114 (L), 06-4271
US v. Brandi Hambrick
(Faber)

CRIMINAL LAW & PROCEDURE. Sufficiency of the evidence to support conspiracy convictions; evidentiary and sentencing issues.

06-1576
American Mortgage v. Shelton
(Horn)

CIVIL. Whether district court properly granted summary judgment denying rescission of mortgage transaction; other issues.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

THURSDAY, MARCH 15, 2007

REVD 2/21/07

UNITED STATES COURT OF APPEALS
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Richmond, Virginia
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NUMBER AND STYLE

NATURE OF CASE

06-1588

Rosenruist Gestao v. Virgin Enterprises
(Hilton)

CIVIL PROCEDURE. Whether the district court has authority to enforce terms of deposition subpoena issued under 35 U.S.C. Section 24 to a non-resident alien corporation; other issues.

06-4229 (L), 06-4230 06-4273 06-4396 06-4398 06-4418

US v. Martin Louis Baucom
(Mullen)

CRIMINAL LAW & PROCEDURE. Whether variance sentence below challenged guidelines range was unreasonable; other issues.

05-4962

US v. Soriano-Jarquin
(Cacheris)

CRIMINAL LAW & PROCEDURE. Fourth Amendment issue involving police request for identification of passengers; speedy trial issue; whether defendant was improperly denied witness testimony.

PANEL I

COURTROOM ONE

Courthouse Room 412 (Red Carpet)

** 8:15 a.m. **

FRIDAY, MARCH 16, 2007

REVD 3/15/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/12/2007 - 03/16/2007 Session)

NUMBER AND STYLE

NATURE OF CASE

05-4460

US v. Christopher Ferguson
(Wexler)

CRIMINAL LAW & PROCEDURE. Whether, for defendant convicted of a drug conspiracy offense under Section 841(a), district court's failure to provide Pinkerton instruction for penalty purposes under Section 841(b) created Sixth Amendment error.

04-4107

US v. Curtis A. Beasley
(Herlong)

CRIMINAL. Whether Section 851 criminal information was filed "before trials;" cumulative evidentiary errors; Booker sentencing claim.

05-5249 (L), 06-4012

US v. Byron K. Allen
(Legg)

CRIMINAL LAW & PROCEDURE. Propriety of jury instruction on element of intent to defraud; whether court erred in ordering defendant to provide documents to government; other issues.

05-6376

Strong v. Johnson
(Brinkema)

HABEAS CORPUS. Whether the state court's determination that Strong received effective assistance of appellate counsel was entitled to a presumption of correctness.

PANEL II
COURTROOM TWO
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8:30 a.m.

FRIDAY, MARCH 16, 2007

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

06-6699

McClung v. Hollingsworth
(Quarles)

HABEAS. Is there sufficient evidence of constructive possession for institutional infraction where evidence indicates many inmates had access to cell where contraband was found.

06-1892

Difelice v. US Airways Inc
(Ellis)

ERISA. Did company violate fiduciary duty with respect to plan intended to provide retirement benefits when it held and acquired shares in company stock fund when company was in financial distress.

05-4997 (L), 05-4998 05-4999 05-5000

US v. Deone A. Melvin
(Williams)

CRIMINAL LAW & PROCEDURE. Whether district court abused its discretion in refusing to sever; numerous challenges to admissibility of evidence and jury instructions; other issues.

06-4461

US v. Charles D. Izac
(Keeley)

CRIMINAL LAW & PROCEDURE. Whether the district court erred in precluding defendant from presenting state of mind evidence in support of justification defense; other issues.

PANEL III
COURTROOM THREE
Courthouse Room 223 (Tan Carpet)
8:30 a.m.

FRIDAY, MARCH 16, 2007